IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 4336 of 2004(N)

PETITIONER:

N. SUDHEENDRAN NAIR, S/O.K. NARAYANA PILLAI, AGED 51 YEARS, HIGH SCHOOL ASSISTANT (NATURAL SCIENCE) GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL, KALLARA-695 608, TRIVANDRUM.

BY ADV. SRI.V.A.MUHAMMED
SRI.E.S.ASHRAF

RESPONDENTS:

1. **THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **THE DISTRICT EDUCATIONAL OFFICER, TRIVANDRUM.**

3. **THE HEAD MASTER, GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL, KALLARA-695 608, TRIVANDRUM.**

BY GOVERNMENT PLEADER SRI. MANOJ KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.4336 OF 2004

EXT.P1: COPY OF G.O.(MS)NO.10/81/G. EDN. OF GOVERNMENT.

EXT.P2: COPY OF G.O.(MS)NO.134/86/G. EDN. OF GOVERNMENT.

EXT.P3: COPY OF G.O.(P)NO.480/89/FIN. OF GOVERNMENT.

EXT.P4: COPY OF G.O.(MS)NO.57/91/(89)/FIN. OF GOVERNMENT.

EXT.P5: COPY OF G.O.(MS) NO.347/2000/G.EDN. OF GOVERNMENT.

EXT.P6: COPY OF G.O.(P)NO.938/2001/FIN. OF GOVERNMENT.

EXT.P7: COPY OF JUDGMENT IN O.P.NO.12544/2003-R OF THIS HON'BLE COURT.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.4336 OF 2004

Dated this the 30th day of November, 2007

JUDGMENT

The petitioner started service as a U.P. School Assistant in an aided school on 19.7.1979 and worked as such till 9.7.1984. Later on he joined Government service as a P.D. Teacher. He was promoted as HSA on 13.11.1998. Taking into account all services, the petitioner would complete 23 years of service on 16.7.2002. The petitioner's complaint in this writ petition is that although on completion of 23 years of service as above the petitioner is entitled to selection grade, he has not been granted the same on the ground that for the purpose of selection grade only the petitioner's service as High School Assistant in the Government Schools would be considered. His claim in this regard has been negatived on the basis of Ext.P5. The petitioner therefore seeks the following reliefs.

> " (a) call for the records relating to Exhibit P-5 and quash the originals of the same by the issue of a writ of certiorari or other appropriate writ or order.
>
> (b) issue a writ of mandamus or

> other appropriate writ order or direction commanding the respondents to grant Selection Grade to the petitioner in the Primary Cadre counting both primary and HAS Service in the light of the judgment in O.P. No.7348/2003 and connected cases as well as in view of Exhibit P-7 judgment."

2. The learned Government pleader submits that although in view of Exts.P1 to P6 orders as well as Ext.P7 judgment the petitioner is entitled to have his primary school service also reckoned for the purpose of grant of selection grade, he is not entitled to have his aided school service counted for the purpose.

3. The learned counsel for the petitioner would submit that since Ext.P7 judgment refers to both Government and Private School Teachers, the petitioner is entitled to have his aided school service also counted for the purpose.

4. I have considered the rival contentions in detail. Two Division Benches of this Court has in separate judgments held that for the purpose of granting increment, on coming over to government service prior aided school service cannot be counted and that for the purpose of weightage in pay fixation also prior aided school service cannot be counted in respect of Government school teachers. Although in Ext.P7

judgment both Government and Private School teachers have been referred to that can only mean that the Government School teachers and private school teachers are separately entitled to have their primary school service also counted for the purpose of selection grade. As such, I am not inclined to accept the contention of the petitioner that he is entitled to have his aided school service counted for the purpose of selection grade. However, in view of G.O.(MS) No.552/2004/Fin. Dated 25.11.2004 primary school service of Government school teachers are liable to be counted for the purpose of selection grade and therefore the petitioner is entitled to the said benefit.

In the above circumstances, the writ petition is allowed to the above extent of directing the respondents to pass fresh orders computing the petitioner's service as P.D. Teacher also for the purpose of granting selection grade, but excluding the aided school service. Orders in this regard shall be passed within a period of two months from the date of receipt of a copy of this judgment. Needless to say, the petitioner would also be entitled to monetary benefits arising there from.

S. SIRI JAGAN, JUDGE

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